

HR-87-023-JL  
8-1700-1423-2  
DHR File No. E6875

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Jayne B.  
Khalifa, Acting Commissioner,  
Department of Human Rights,

ORDER DISMISSING  
COMPLAINT

Complainant,

V.

Independent School District No. 701,

Respondent.

The above-captioned matter is pending before the undersigned  
Administrative Law Judge pursuant to a Complaint and a Notice and Order for  
Hearing filed with the Office of Administrative Hearings on March 19, 1987.

Deborah J. Kohler and Carl M. Warren, Special Assistant Attorneys  
General,  
1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota  
55101, have appeared on behalf of the Complainant. Paul F. Wojciak, Attorney  
at Law, Hibbing Business Center, Suite 201, 522 East Howard Street, Hibbing,  
Minnesota 55746, has appeared on behalf of the Respondent.

On June 22, 1987, the Respondent filed a Motion to Dismiss the Complaint  
and the underlying charge of Susan L. Haverkamp (Charging Party) on the  
grounds that a verified charge was not filed with the Department within the  
time limit set forth in Minn. Stat. 363.06, subd. 3 (1978) and on the  
further grounds that the Complainant is chargeable with laches which has  
prejudiced the Respondent. Respondent's Motion for Dismissal was accompanied  
with a request for attorney's fees and costs. On July 7, 1987, the  
Complainant filed a brief in opposition to the Motion to Dismiss.  
Subsequently, on Monday, August 10, 1987, oral arguments on the Motion were  
heard at the Office of Administrative Hearings in Minneapolis. The record  
closed at the conclusion of that hearing.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 3, this Order is the final  
decision in this case and under Minn. Stat. 363.072, the Commissioner of  
the  
Department of Human Rights or any person aggrieved by this decision may seek  
judicial review pursuant to Minn. Stat. 14.63 through 14.69.

#### STATEMENT OF ISSUES

The issues that must be determined in this case are whether or not dismissal is appropriate on the grounds asserted by the Respondent; and if so, whether the Respondent is entitled to the attorney's fees and costs requested.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

- (1) That the Respondent's Motion for Dismissal on the grounds that the Charging Party did not file a timely verified charge of discrimination with the Department of Human Rights is GRANTED.
- (2) That the Complaint be and it is hereby DISMISSED.
- (3) That the Respondent's request for costs and attorney's fees is DENIED.

Dated this 31st day of August, 1987.

JON L. LUNDE  
Administrative Law Judge

#### MEMORANDUM

The Respondent's first ground for dismissal is based on the Charging Party's failure to file a verified charge of discrimination within six months after the occurrence of the practice alleged to have been discriminatory. The Complainant admits that a verified charge was not filed within six months after the occurrence of the practice complained of, but argues that the unverified charge filed within the six-month period was sufficient to meet the statutory requirements. The date of the occurrence of the action complained of and the other facts relevant to the charge in this case are not disputed. The record shows the following undisputed events:

1. In July 1979, the Charging Party applied for a full-time elementary teaching position with the Respondent.
2. On August 15, 1979, she learned that other individuals had been hired for the available positions.
3. On August 20, she discussed her dissatisfaction with the procedures the Respondent followed in filling the positions with the Respondent's Superintendent.
4. On August 22, 1979, she also discussed the Respondent's failure to

hire her with Robert Parker, who hired elementary school teachers. Parker had selected the persons who would be hired for the kindergarten positions the Charging Party had sought.

5. Later the same month, the Charging Party, who believed that she had been discriminated against on the basis of her age, telephoned the Duluth Office of the Minnesota Department of Human Rights to discuss the matter.

6. On or about November 6, 1979, the Charging Party mailed a 23-page statement regarding her application for employment with the Respondent and her conversations with the Respondent's personnel before and after other individuals were hired for the kindergarten teaching positions for which she had applied. Her statement was received in the Duluth office on November 8, 1979. The statement contained the information required by Minn. Rule HumRts 102(a), but it was not verified.

7. On or before January 25, 1980, a seven-page questionnaire was completed by an employee of the Department's Duluth office. The information included in the questionnaire was obtained from the Charging Party.

8. Late in 1979 or in January 1980, the Charging Party's 23-page statement concerning her application for employment with the Respondent along with the questionnaire form completed by a staff person were mailed to the Department's St. Paul office.

9. On February 28, 1980, the Department advised the Charging Party by letter that she had submitted enough information to file a charge of discrimination with the Department. A typewritten charge form was enclosed with the letter for her verified signature.

10. On March 3, 1980, the charge form was signed and verified.

11. On March 11, 1980, the Charging Party's verified charge was filed with the Department of Human Rights.

12. On March 26, 1980, Judith B. Langevin, Assistant Commissioner of the Minnesota Department of Human Rights, wrote to the Respondent's Superintendent. In her letter, Ms. Langevin advised the Superintendent, E. W. Eggers, that the Charging Party had filed a charge of discrimination against the Respondent. That letter was received by the Respondent on March 31, 1980, and was its first notice of the Charging Party's grievance. It is unclear if the letter mailed to the Respondent included a copy of the charge filed with the Department on March 11, 1980.

Since a verified charge was not filed until March 11, 1980, more than six months after the Charging Party knew of the discriminatory act, the Respondent argues that this matter must be dismissed. Complainant argues, on the other hand, that the statement the Charging Party filed with the Department on November 8, 1979, satisfied the charging requirements under the law in effect at that time. For the reasons set forth below, it is concluded that the Charging Party failed to file a timely charge of discrimination against the

Respondent. As a result, the Administrative Law Judge does not have authority or jurisdiction to proceed, and the Complaint, as well as the underlying charge, must be dismissed.

In State of Minnesota, by Jayne B. Khalifa, Acting Commissioner, Department of Human Rights, Complainant v. Russell Dieter Enterprises, Inc., d/b/a Montevideo Variety, Inc. and Ben Franklin Variety Store, Respondent,

OAH Docket No. HR-87-013-PE, 4-1700-1176-2, it was decided that a charging party's failure to file a verified charge of discrimination within six months after the occurrence of the practice alleged to be discriminatory required dismissal because verification is a jurisdictional requirement. For the reasons set forth in the Order dismissing the Complaint in that case, which Order is attached hereto and incorporated herein by reference, the charge in this case, as well as the Complaint, must be dismissed. A verified charge must be filed within six months of the alleged discriminatory act under Minn. Stat. 363.06, subds. 1 and 3 (1978).

At an early date, the Minnesota Supreme Court held that the time limit within which a charge of discrimination must be filed is jurisdictional. *Richardson v. School Board of Independent District No. 271*, 297 Minn. 91, 98, 210 N.W.2d 911, 916 (1973). Accord *Minnesota Mining & MFG Co. v. State*, 289 N.W.2d 396, 401 (Minn. 1979). The viability of those decisions were placed in doubt after the United States Supreme Court's decision that the time limit for filing charges with the Equal Employment Opportunity Commission under Title VII is not jurisdictional. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982). Cf. *State by Gomez-Bethke v. Eastern Airlines*, 346 N.W.2d 184, 186 n. 1 (Minn. App. 1984). However, in *Carlson v. Independent School Dist. No. 623*, 392 N.W.2d 216 (Minn. 1986), the Minnesota Supreme Court rejected the decision in *Zipes*. Rejection of the *Zipes* case persuades the Judge that the federal cases based on *Zipes* are not authoritative in Minnesota. Thus, while most federal courts have held that the failure to file a verified charge within the time limits set forth in federal law does not constitute a jurisdictional defect, the failure to file a verified charge within six months was a jurisdictional defect for purposes of the Minnesota Human Rights Act in 1979.

The purpose of requiring a verified charge is to ensure that employers will not be harassed by frivolous complaints. *Weeks v. Southern Bell Telephone & Telegraph Co.*, 408 F.2d 228 (5th Cir. 1979). That policy is one of the declared purposes of the Minnesota Human Rights Act. Minn. Stat. 363.12, subd. 1(5) states, in part:

\* \* \* It is also the public policy of this state to protect all persons from wholly unfounded charges of discrimination. \* \* \*

To protect persons from wholly unfounded charges of discrimination and the time and expense of explaining their actions, the requirement for a "verified" charge must have been promulgated. The legislature must have determined that the Department should not investigate charges that have not been sworn to by the person filing the charge. It is equally apparent that the legislature wanted charges to be filed within a short period of time (six months) and be promptly resolved. The statute requires the Department to serve a copy of the charge upon the employer within five days and then to promptly inquire into the truth of the allegations. See generally Minn. Stat. 363.06 (1980). Based on *Carlson*, the Judge is persuaded that Minn. Stat. 363.06, subds. 1 and 3 must be read together and that they require the filing of a verified charge within six months of the discriminatory act. In the absence of a

verified charge, which means a charge supported by oath or affirmation,'

'See Minn. Stat. 645.45(20) (1980).

the Department was not expected to proceed with an investigation or serve the charge upon an employer. Since the court has held that the six-month filing period is jurisdictional, and since charges must be verified, the Judge is persuaded that the failure to file a verified charge within six months of the act complained of is a jurisdictional defect that requires dismissal and that the alternative rationale based on Zipes should not be followed. The legislature made a determination that the procedures required under 363.06 should be set in motion by a charge filed within a six-month time period. It also decided that the process should not begin until the charge was sworn to in order to protect employers from unfounded charges of discrimination. The charging party's failure to file a verified charge within the six-month time period did not permit the statutory machinery to be set in motion in the manner contemplated by the legislature and, as stated by the court in Carlson, this was a jurisdictional defect which requires dismissal.

The Department argues that the charge must be considered timely under Administrative Rule HumRts 102, which reads:

(a) A charge shall contain: (1) the name and address of the person filing the charge; (2) the name and address of the person against whom the charge is filed; (3) a clear and concise statement of the facts which, in the judgment of the person filing the charge, may constitute the alleged unfair discriminatory practice; (4) the signature of the person filing the charge; and (5) any other information required by the commissioner.

(b) Notwithstanding the provisions of HumRts I and 102(a), a charge is deemed filed when the Department receives from a person making a charge a written statement sufficiently precise to identify the parties and describe generally the action or practices complained of.

Under Rule HumRts 1, a "charge" was defined as follows:

"Charge" means a sworn written statement filed by any person, including the commissioner, containing an allegation that a person may have engaged or may be engaging in an unfair discriminatory practice.

In the Department's view, HumRts 102(b) requires that the charge in this case -be considered timely because the Charging Party submitted a written statement sufficiently precise to identify the parties and describe generally the

actions or practices complained of in November 1979. That is not a persuasive argument. That statement was not treated as a charge by the Department and a copy was never served upon the Respondent. Moreover, the statute requires that a verified charge be filed within six months of the discriminatory act. To the extent that the rule suggests that a verified charge does not have to be filed within six months, it is irreconcilable with the statute. Therefore, the Judge is persuaded that the rule is subject to an implied condition subsequent that the unverified filing made, if any, be verified within the six-month period so that the Department's procedures and its investigation can be promptly triggered. In this case, the "charge" filed with the Department

was not verified within the six-month period required by statute. Therefore, it is untimely. That untimeliness is a jurisdictional defect which deprives the Commissioner of Human Rights and the Administrative Law Judge of authority to proceed in this case.

In view of the dismissal required for the Charging Party's failure to file a verified claim within six months of the discriminatory act, it is unnecessary to consider the Respondent's other grounds for dismissal.

#### Attorney's Fees

The Respondent's request for attorney's fees and costs in this matter was not shown to have a statutory basis and is denied. Minn. Stat. 363.071, subd. 2 does not authorize the award of attorney's fees to respondents and the Respondent has not shown that attorney's fees should be awarded under Minn. Stat. 3.761, et seq. Since no statutory basis for attorney's fees has been established, the request for fees is denied.

J.L.L.